

EXHIBIT 2
DATE 3-29-07
HB 844

Heard 3/28
A.M.

Dear Chairman John Sinrud and Committee Members,

I am against HB 844.

Chairman Sinrud and Members changing meaning of GROUNDWATER is an attempt to create more water.

In August, 2003, DNRC received a complaint regarding water wells (1000 gals/min) at West Gallatin River, Gallatin County, BEING USED, prior to a DNRC PERMIT being granted.

DNRCs' Chief Legal Counsel, ATTY Don MacIntyre, knew these Water Wells VIOLATED Montana Water Laws, yet allowed continued use to occur without a DNRC permit.

Now he represents/lobbies the same Water Wells (referenced above) in the Gallatin County to this committee, as a proponent for HB 844.

GROUNDWATER does not need to be redefined or changed.

Note an attached COPY of District Court Judge Dorothy McCarter, DATED MARCH 26, 2007
DECISION AND ORDER
CAUSE No. ADV-2006-454

Note UTILITY SOLUTIONS and DNRC are the DEFENDANT, who LOST.

Thank you for allowing this letter,

Tony Kolnik Dated March 29, 2007

Tony Kolnik

Owner Property and Water Rights, Gallatin County.

658 Warren

Helena, Mt, 59601

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

JAMES C. LOHMEIER, SANDY
McMANUS and ROSELEE FAUST,

Plaintiffs,

v.

STATE OF MONTANA,
MONTANA DEPARTMENT OF
NATURAL RESOURCES AND
CONSERVATION,

Defendant.

Cause No. ADV-2006-454

DECISION AND ORDER

This matter is before the Court on a request for declaratory relief under Section 2-4-506, MCA. Specifically, Plaintiffs seek to have this Court declare invalid a decision of Defendant (DNRC) to repeal ARM 36.12.101(39) defining "municipal use."

The parties filed cross-motions for summary judgment, as did Defendant-Intervenor Utility Solutions, LLC. A hearing was held November 16, 2006. Plaintiffs were represented by Frederick P. Landers, Jr.; DNRC was represented by Britt T. Long and Tim D. Hall; and Utility Solutions was represented by Matthew W. Williams.

↑ Lobbyist Don MacIntyre

1 legislature's decision to exempt municipal uses from the basin closure.

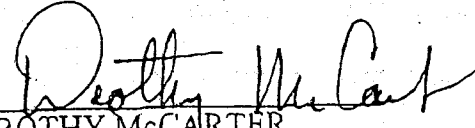
2 Application of liberal definitions to any of the enumerated exceptions to
3 the basin closure laws would clearly undermine the purpose of the laws – to protect the
4 existing water rights. Expanding the definition to permit private developers in any part
5 of the Upper Missouri River Basin to appropriate water for new subdivisions would
6 most likely take a significant amount of water away from the already over appropriated
7 water source, resulting in not enough water for the owners of the existing water rights. } *

8 The Court concludes that the legislature intended to preserve the existing
9 water rights by closing the Upper Missouri River Basin to new appropriations. The
10 exceptions to the closure must be interpreted narrowly to comply with the legislative
11 intent. The repeal of the narrowly defined term "municipal use" in order to enable
12 DNRC to apply a more liberal definition contravened the legislative intent and placed
13 the existing water rights of Plaintiffs in jeopardy. Therefore, Plaintiffs are entitled to
14 summary judgment. *

15 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
16 summary judgment is GRANTED to Plaintiffs.

17 IT IS SO ORDERED.

18 DATED this 26 day of March, 2007

19
20 
21 DOROTHY McCARTER
22 District Court Judge

23 pcs: Arthur W. Wittich/Frederick P. Landers, Jr.
24 Britt T. Long/Tim D. Hall
25 Matthew W. Williams

TJDMc/luhneier v dnrc d&o.wpd

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